

Summary of Substantive Proposed Amendments to the
Local Rules of the Bankruptcy Court for the Eastern District of New York

The proposed amendments to the local rules of the United States Bankruptcy Court for the Eastern District of New York implement certain changes to the Bankruptcy Code made pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). The proposed local rules also address the suspension of attorneys, mediation, electronic filing procedures, and conform certain rules to current practice. Although many procedural amendments to the local rules are proposed, this memorandum will only address the substantive proposed amendments.

A. BAPCPA Implementation - Confidentiality of Personal Identifiers and Tax Information

Bankruptcy Code § 521(e) and Interim Federal Rule of Bankruptcy Procedure 4002 require a debtor to provide a copy of his most recent Federal income tax return preceding the filing to the trustee, as well as to any creditor requesting a copy. Bankruptcy Code § 521(f) requires a debtor to file with the Bankruptcy Court tax returns for the tax years ending while the case is pending upon the request of a party in interest. Federal Rule of Bankruptcy Procedure 9037 provides for the redaction and protection of certain personal identifiers, such a debtor's social security number, in filings with the Bankruptcy Court.

Proposed E.D.N.Y. LBR 4002-1 places the responsibility on the debtor to redact personal identifiers appearing in filings by the debtor, and establishes a duty of confidentiality on any party of interest who obtains unredacted personal identifiers or the debtor's tax information. A party may disclose personal identifiers only to an employee or financial or legal advisor with a need to know such information in connection with the bankruptcy case. A party may disclose tax information to the extent necessary in connection with the case or adversary proceeding, but must seek Court approval before disclosing it for any other purpose. The rule further provides that the debtor waives the right to confidentiality of the debtor's personal identifiers if the debtor fails to redact them.

The proposed local rules also establish various noticing requirements in relation to relief now available under BAPCPA. The following is a list of such local rules: 1007-2, 3015-3, 4001-2, and 4001-3.

B. Suspension of Attorneys

Proposed E.D.N.Y. LBR 2090-1(e) provides that if an attorney is subject to disciplinary proceedings in the District Court, the Bankruptcy Court may, for good cause shown, suspend the attorney pending the District Court's determination. Grounds for such suspension include the conviction of a serious crime, disbarment in another court, or resignation in another court while an investigation into allegations of misconduct is pending. This rule addresses the problem which arises when an attorney who has been suspended or disbarred in state court continues practicing in Bankruptcy Court pending the outcome of disciplinary proceedings in District Court.

C. Required Representation of a Debtor in Adversary Proceedings and Sanctions

The proposed amendment to E.D.N.Y. LBR 2090-2(a) provides that an attorney may only exclude the defense of adversary proceedings from the representation of a debtor in a retainer agreement, and may not exclude any other aspect of the case from the representation, such as appearing at the Bankruptcy Code § 341 meeting or defending a motion filed against the debtor. This proposed amendment addresses the problem that arises when an attorney limits the representation to filing the bankruptcy petition, leaving the debtor unrepresented for the remainder of the case. Proposed E.D.N.Y. LBR 2090-2(e) provides that the Court may, after notice and a hearing, sanction any attorney who does not comply with this rule.

Proposed E.D.N.Y. LBR 2090-2(c) provides that, notwithstanding the above, an attorney representing a debtor in a chapter 11 or chapter 13 case, or a chapter 11 trustee, is relieved from representing that party upon the conversion of the case to one under chapter 7, except that the attorney shall assist the party in the performance of their duties upon conversion under any applicable statute or rule. This amendment is proposed because the attorney of a former chapter 11

or 13 debtor, or of a chapter 11 trustee, would not be compensated from the estate, and conforms with practice.

D. Mediation

Proposed E.D.N.Y. LBR 9019-1 provides that the Court may determine which parties in interest shall participate in court-ordered mediation, and that the Court may appoint a mediator if the parties are unable to agree on one. This proposed amendment will conform the rule with current practice. The proposed rule also requires the filing of a verified statement by the mediator stating that he does not hold or represent an adverse interest to the estate and that he is disinterested.

E. Electronic Filing Requirements

Proposed E.D.N.Y. LBRs 1002-1, 5005-2, 8006-1, 9011-1, 9018-1, 9036-1, and 9036-2 establish electronic filing procedures, or adopt procedures already in place pursuant to general order, with respect to an Electronic Case, as defined in E.D.N.Y. LBR 9001-1(a)(xiii).